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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/826,924	04/06/2001	Leon Atkinson	LED001	3619

7590 09/24/2003  
DIEDERIKS & WHITELOW, PLC  
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EXAMINER

NGO, LIEN M

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 09/24/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/826,924

Applicant(s)

ATKINSON ET AL.

Examiner

LIEN TM NGO

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-13, 15-27 and 29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13, 15-27 and 29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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### **DETAILED ACTION**

1. The finality or the office action issued 1/29/03 (paper No. 9) has been withdrawn and replaced by this office action as following:

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-13, 14-27 and 29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 16 are indefinite because it is unclear how a density of a material can be compressed in multiple times from uncompressed density. An object or a material may be compressed or uncompressed in a certain way, but its density can not be compressed.

#### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section

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122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or  
(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a)

5. Claims 1, 2, 9 and 12 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Weissman et al. (6,135,253).

In regard to claims 1 and 2, Weissman et al. disclose, in figs. 1, 2 and 3, a compact package for a garment comprising a container body 14 having an open end; a garment 100 being compressed within the container storage chamber in multiple times; a buffer material 29 separate from the garment, arranged upon the garment with the storage chamber; and cover member 22 extending across the open end of the storage chamber to retain the garment and buffer material with the container body. The cover member is provided with a plurality of opening 56.

In regard to claim 9 and 12, the package further comprises a cap 12, and the buffer material is different from the garment.

To the degree it can be argued that Weissman does not disclose the garment being delicate material or hosiery. However garment made from a delicate material or hosiery put in a package is well known in the art. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the Weissman et al. package for hosiery, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

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***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 5-7, 11 -13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirkland (6,006,945) in view of Elmaleh (5,692,606) and further in view of Eimer (2,936,101).

Kirkland discloses, in fig. 1 and col. 5, lines 45-50, a package comprising a body 12, a garment 22 or hosiery (see col.5, line 48), a cover member 14 having a pull- tab element 26 with a ring, and the package may be made with different sizes (col. 4, lines 1, 7).

Elmaleh teaches, it is well known that a garment or hosiery being compressed within a package.

Eimer teaches discloses, in col.2, lines 46-48, a package having a tissue wrapping (buffer) for a article package within a container which is well known in the art.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Kirkland package with a size as claimed (less than 10 in3) which stored a pair of pantyhose compressed within the package , as taught by Elmaleh, and

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wrapped with a tissue paper, as taught by Eimer, in order to have a compact package for a pair of pantyhose with a tissue wrapping which can be sold in a venting machine.

In regard to claim 6, Kirkland disclose, in col.2, lines 45-47 and col. 5, lines 9-11, the container may be made of aluminum or plastic; therefore, the pull-tab is capable to pivotally turn on the cover.

8. Claims 9, 16, 21-23, 25-27 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirkland in view of Elmaleh and Eimer and further in view of Lanham (4,981,229).

The combination of Kirkland in view of Elmaleh and Eimer does not disclose the package comprising a cap member.

Lanham teach a pull-tab container having a cap member.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the package of Kirkland in view of Elmaleh and Eimer with a cap member, as taught by Lanham, in order to provide a cover for the package when the pull-tab cover is removed.

9. It is to be noted claims 3, 4, 8, 10, 17-20 and 24 have not been rejected over the prior art of record. However, in view of the 35 U.S.C. 112 issues, comment as to the allowability of these claims can not be made as this time.

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***Response to Arguments***

10. Applicant's arguments with respect to claims 1-13, 15-27 and 29 have been considered but are moot in view of the new ground(s) of rejection.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Wilt and Richer teach garments are compressed in containers

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Ngo whose telephone number is (703) 305-0294. The examiner can normally be reached Monday through Friday from 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful. The examiner's supervisor, Lee Young, can be reached at (703)308-2572. The Group FAX number is (703) 305-3579.

Any inquiry of a general nature or relating to the status of the application should be directed to the Group receptionist at (703) 308-1148.



Lien Ngo

September 13, 2003



LEE YOUNG  
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